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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

IRVEN WADE,

Plaintiff,

v.

UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA AND THE CLARK  
COUNTY BOARD OF COUNTY  
COMMISSIONERS, a political subdivision of the  
State of Nevada,

Defendants.

**Case No.:**

**COMPLAINT**  
(Counsel will comply with  
LR IA 11-2 within 45 days)

**DEMAND FOR JURY TRIAL**

Plaintiff, IRVEN WADE, by and through his undersigned counsel, EISENBERG &  
BAUM, LLP, files this Complaint against Defendants, UNIVERSITY MEDICAL CENTER OF  
SOUTHERN NEVADA AND THE CLARK COUNTY BOARD OF COUNTY  
COMMISSIONERS, a political subdivision of the State of Nevada (collectively Defendants),

1 and alleges as follows:

2 **PRELIMINARY STATEMENT**

3 1. Plaintiff Irven is profoundly deaf and communicates primarily in American Sign  
4 Language ("ASL"), which is his expressed, preferred, and most effective means of  
5 communication. His deafness impacted his ability to learn and acquire language from an early  
6 age, and as a result, he has difficulty communicating in English.<sup>1</sup> Plaintiff is likewise unable to  
7 effectively communicate by reading lips.<sup>2</sup> Defendants are a county-wide hospital and a  
8 governmental body overseeing the unincorporated areas of Clark County, Nevada.  
9

10 2. Defendants both hindered and prevented Plaintiff from benefitting from their  
11 services, and discriminated against Plaintiff unlawfully, on the basis of Plaintiff's disability of  
12 deafness by refusing to provide the ASL interpreters that Plaintiff required to understand and  
13 participate in his medical care during a procedure and subsequent four-day hospitalization that  
14 Plaintiff underwent in Defendants' facilities. This denial was in spite of Plaintiff's repeated  
15 requests for an interpreter.  
16

17 3. Based on Plaintiff's allegations herein, it is evident that Defendants have failed  
18 to implement policies, procedures, and practices respecting the civil rights and communication  
19 needs of deaf individuals. Plaintiff brings this lawsuit to compel Defendants to cease unlawful  
20

21 \_\_\_\_\_  
22 <sup>1</sup> Due to physical, environmental, and pedagogical factors, many deaf individuals have  
23 difficulty acquiring spoken languages such as English. Indeed, the median reading level of deaf  
24 high school graduates is fourth grade. This is because many deaf people acquire English as  
their second language (after ASL or another form of sign language) well past the critical  
developmental period of language acquisition.

25 <sup>2</sup> Lip-reading, or the ability to understand the speech of another by watching the speaker's lips,  
26 is an extremely speculative means of communication and is no substitute for direct  
communication through a qualified sign language interpreter. Only a small number of spoken  
27 sounds in aural language are visible, and many of those words appear identical on the lips.  
Even if a primary ASL user were able to determine the sounds appearing on a speaker's lips, he  
28 or she would still not necessarily understand the English language as English and ASL are  
distinct languages with disparate grammatical structures.

1 discriminatory practices and implement policies and procedures that will ensure effective  
2 communication, full and equal enjoyment, and a meaningful opportunity for deaf individuals to  
3 participate in and benefit from Defendants' health care services.

4 4. Plaintiff brings this action seeking declaratory, injunctive, and equitable relief;  
5 compensatory damages; and attorneys' fees and costs to redress Defendants' unlawful  
6 discrimination against Plaintiff on the basis of his disability in violation of Section 1557 of the  
7 Patient Protection and Affordable Care Act ("ACA"), 42 U.S.C. § 18116.

8  
9 **THE PARTIES**

10 5. Plaintiff IRVEN WADE brings this action as an individual residing in  
11 Sacramento, California. Plaintiff is a profoundly deaf individual who has limited English  
12 proficiency and who primarily communicates in American Sign Language. Plaintiff is  
13 substantially limited in the major life activities of hearing and speaking and is an individual  
14 with a disability within the meaning of federal and state civil rights laws.

15 6. Defendant UNIVERSITY MEDICAL CENTER OF SOUTHERN NEVADA  
16 ("Defendant" or "UMC"), is a county-owned hospital with a corporate address at 1800 West  
17 Charleston Blvd., Las Vegas, NV 89102. Upon information and belief, Defendant University  
18 Medical Center is a recipient of federal financial assistance, including Medicare and/or  
19 Medicaid reimbursements.

20 7. Defendant CLARK COUNTY BOARD OF COUNTY COMMISSIONERS  
21 (hereinafter "Clark County Commission") is the governmental organization that runs  
22 the unincorporated areas of Clark County, Nevada located in downtown Las Vegas. The Clark  
23 County Commission owns and operates University Medical Center of Southern Nevada. Upon  
24 information and belief, the Clark County Commission is a recipient of federal financial  
25 assistance, including Medicare and/or Medicaid reimbursements.

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1 facilities for four days. At no point during his stay from March 15, 2015 through March 18,  
2 2015 was an interpreter or any other auxiliary aid or service provided.

3 17. Plaintiff sustained serious injuries in the car accident. In particular, both of  
4 Plaintiff's wrists were severely broken. Through written notes, Defendants' staff informed  
5 Plaintiff that he required surgery on both of his wrists.  
6

7 18. However, due to his lack of English proficiency, the injuries to his wrists, the  
8 extreme pain that Plaintiff was in, and the medication that he was given, Plaintiff was unable to  
9 communicate with hospital staff through written notes.

10 19. Nonetheless, hospital staff insisted that Plaintiff communicate through written  
11 notes and failed to provide any other means of communication to him. Medical staff would  
12 hold pieces of paper out on which they indicated that they wanted for Plaintiff to write  
13 messages. However, his arms, which had been severely injured in the accident, were simply  
14 non-functional.  
15

16 20. Additionally, Plaintiff was heavily medicated on Morphine in addition to a  
17 number of other medications. As a result, he was completely unable to communicate through  
18 written English, a language in which he lacks proficiency in even the most ideal conditions.  
19

20 21. As a result, Plaintiff was unable to communicate with medical staff about his  
21 pain levels, his discomfort, his hunger, his body temperature, etc.

22 22. In spite of the severe pain that Plaintiff was experiencing, the date of his surgery  
23 was repeatedly pushed back by hospital staff without any explanation to Plaintiff.

24 23. As a result, Plaintiff was forced to endure days of excruciating pain with no  
25 ability to understand or communicate with staff about his medical condition. The stress and  
26 sheer torture of this situation left Plaintiff in an extreme state of stress and unable to sleep  
27 peacefully for days at a time.  
28

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1           24.     During this time, Plaintiff repeatedly requested, and was repeatedly denied, sign  
2 language interpreters.

3           25.     Eventually, Plaintiff's sister (Kaddie Ruiz) learned of his hospitalization and  
4 drove from California to Las Vegas and stayed in a hotel to aid in his care.

5           26.     When she arrived, Plaintiff's sister was shocked by the state of her brother who  
6 was sweating, red, highly unwell, and in desperate need of surgery.

7           27.     Plaintiff's sister immediately informed hospital staff that her brother was in  
8 desperate need of an ASL interpreter. None was provided.

9           28.     Defendants' staff tasked Plaintiff's sister with serving as his interpreter even  
10 though she is not an interpreter and did not wish to function as such.

11           29.     In spite of his sister's presence, Defendants' staff continued to delay his surgery.

12           30.     As a result, Plaintiff's sister decided that Plaintiff should discharge himself from  
13 the hospital and seek medical care elsewhere.

14           31.     When Defendants' staff learned that Plaintiff planned to discharge himself, they  
15 stated that he could receive surgery the next day. They nonetheless refused to provide  
16 interpreters before and after the surgery.

17           32.     As a result, Plaintiff discharged himself against medical advice. Again, no  
18 interpreter services were provided at discharge.

19           33.     Plaintiff's sister took Plaintiff to Sacramento, California where he immediately  
20 received surgery and was provided with the services of several interpreters.

21           34.     Upon information and belief, Plaintiff's deafness, and its resulting limitation on  
22 Plaintiff's ability to communicate, were both obvious to Defendants' staff members,  
23 physicians, and surgeons at all times. Defendants' staff noted Mr. Wade's deafness in his chart.

24           35.     In most instances, effective communication could not have taken place between  
25  
26  
27  
28

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1 Plaintiff and Defendants' staff without the aid of a qualified ASL interpreter.

2 36. Indeed, as a result of Defendants' failure to provide effective auxiliary aids and  
3 services, Plaintiff did not understand the procedure he needed to receive; the reasons why that  
4 procedure was being delayed; the purposes of the treatments being provided; the common risks  
5 and/or benefits of those treatments; the common risks, side effects, and benefits of medications  
6 given; the specific dosage instructions for medications given; the existence of any alternative  
7 treatments; the approximate length of care; the potential side effects of stopping treatment; the  
8 details of any aftercare or discharge instructions; etc.

9  
10 37. Defendants' discrimination against Plaintiff, and Plaintiff's resulting lack of  
11 understanding of his medical care, caused Plaintiff to suffer humiliation, anger, frustration,  
12 stress, anxiety, and emotional distress.

13  
14 38. Furthermore, Plaintiff still suffers from extreme pain resulting from his injuries  
15 and the deficient care that he received at Defendants' facilities. To this day, Plaintiff commonly  
16 wakes up in the middle of the night in unbearable pain.

17 39. Defendants and Defendants' staff knew that Plaintiff is deaf and were aware that  
18 Plaintiff made repeated requests for interpreters.

19 40. Defendants also knew or should have known of their obligation as a health care  
20 provider under the ACA to develop policies to promote compliance with the ACA and to  
21 provide reasonable accommodations, including but not limited to the provision of ASL  
22 interpreters to ensure effective communication with deaf persons.

23  
24 41. Defendants and their staff knew or should have known that their actions and/or  
25 inactions created an unreasonable risk of causing Plaintiff greater levels of fear, anxiety,  
26 indignity, humiliation, and/or emotional distress than a hearing person would be expected to  
27 experience.  
28



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42. Nonetheless, Defendants prevented Plaintiff from benefitting from its services by failing to provide the ASL interpreters necessary for his participation and care.

43. In doing so, Defendants intentionally discriminated against Plaintiff and acted with deliberate indifference to his federally protected rights.

44. Defendants' wrongful and intentional discrimination against Plaintiff on the basis of his disability is reflected by Defendants' failure to train employees and promulgate policies of non-discrimination against deaf individuals.

45. As a result of Defendants' failure to ensure effective communication with Plaintiff, Plaintiff received services that were objectively substandard and that were inferior to those provided to patients who are hearing.

46. Plaintiff is entitled to equal access to services offered by Defendants as are enjoyed by non-disabled persons.

47. Plaintiff regularly visits Las Vegas and still wishes to access Defendants' services and receive care in Defendants' facilities, but is being prevented from doing so by Defendants' discrimination against him on the basis of his disability.

48. As a result of his experience in Defendants' facilities, Plaintiff filed a complaint with the Nevada Equal Rights Commission. The complaint was closed in August of 2018.

**CLAIM I: VIOLATIONS OF THE PATIENT PROTECTION AND AFFORDABLE  
 CARE ACT**

49. Plaintiff repeats and re-alleges all preceding paragraphs in support of this claim.

50. At all times relevant to this action, Section 1557 of the Patient Protection and Affordable Care Act has been in full force and effect and has applied to the Defendants' conduct.

51. At all times relevant to this action, Plaintiff has had substantial limitations to the



1 major life activities of hearing and speaking and has been an individual with a disability within  
2 the meaning of Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. §  
3 18116.

4 52. At all times relevant to this action, Plaintiff's primary language for  
5 communication has been American Sign Language (and not English), and Plaintiff has had  
6 limited ability to read, write, speak, or understand English. Plaintiff has therefore been an  
7 individual with limited English proficiency within the meaning of Section 1557 of the Patient  
8 Protection and Affordable Care Act, 45 C.F.R. § 92.4.

9 53. At all times relevant to this action, Defendants received federal financial  
10 assistance, including Medicare and/or Medicaid reimbursements, and have been principally  
11 engaged in the business of providing health care. Therefore, Defendants are a health program or  
12 activity receiving federal financial assistance pursuant to 42 U.S.C. § 18116(a).

13 54. Pursuant to Section 1557 of the Patient Protection and Affordable Care Act, "an  
14 individual shall not, on the ground prohibited under . . . section 504 of the Rehabilitation Act of  
15 1973 (29 U.S.C. § 794), be excluded from participation in, be denied the benefits of, or be  
16 subjected to discrimination under, any health program or activity, any part of which is receiving  
17 Federal financial assistance." 42 U.S.C. § 18116.

18 55. Federal regulations implementing Section 1557 of the Patient Protection and  
19 Affordable Care Act provide that "[a] covered entity shall take reasonable steps to provide  
20 meaningful access to each individual with limited English proficiency eligible to be served or  
21 likely to be encountered in its health programs and activities." 45 C.F.R. § 92.201.

22 56. Federal regulations implementing Section 1557 of the Patient Protection and  
23 Affordable Care Act provide that "(1) A covered entity shall offer a qualified interpreter to an  
24 individual with limited English proficiency when oral interpretation is a reasonable step to  
25  
26  
27  
28

1 provide meaningful access for that individual with limited English proficiency; and (2) A  
2 covered entity shall use a qualified translator when translating written content in paper or  
3 electronic form.” 45 C.F.R. § 92.201(d).

4  
5 57. Federal regulations implementing Section 1557 of the Patient Protection and  
6 Affordable Care Act provide that “[a] covered entity that provides a qualified interpreter for an  
7 individual with limited English proficiency through video remote interpreting services in the  
8 covered entity's health programs and activities shall provide: (1) Real-time, full-motion video  
9 and audio over a dedicated high-speed, wide-bandwidth video connection or wireless  
10 connection that delivers high-quality video images that do not produce lags, choppy, blurry, or  
11 grainy images, or irregular pauses in communication; (2) A sharply delineated image that is  
12 large enough to display the interpreter's face and the participating individual's face regardless of  
13 the individual's body position; (3) A clear, audible transmission of voices; and (4) Adequate  
14 training to users of the technology and other involved individuals so that they may quickly and  
15 efficiently set up and operate the video remote interpreting.” 45 C.F.R. § 92.201(f).

16  
17 58. Federal regulations implementing Section 1557 of the Patient Protection and  
18 Affordable Care Act provide that “[a] covered entity shall take appropriate steps to ensure that  
19 communications with individuals with disabilities are as effective as communications with  
20 others in health programs and activities.” 45 C.F.R. § 92.202(a).

21  
22 59. Federal regulations implementing Section 1557 of the Patient Protection and  
23 Affordable Care Act provide that “(1) A [covered] entity shall furnish appropriate auxiliary  
24 aids and services where necessary to afford individuals with disabilities, including applicants,  
25 participants, companions, and members of the public, an equal opportunity to participate in,  
26 and enjoy the benefits of, a service, program, or activity of a [covered] entity. . . . In  
27 determining what types of auxiliary aids and services are necessary, a public entity shall give  
28

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primary consideration to the requests of individuals with disabilities. In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability.” 45 C.F.R. § 92.202(a); 28 C.F.R. § 35.160(b).

60. As set forth above, Defendants discriminated against Plaintiff, on the basis of disability, in violation of the Patient Protection and Affordable Care Act and its implementing regulations.

61. The Patient Protection and Affordable Care Act, by incorporating the enforcement mechanism of the Rehabilitation Act, extends a cause of action to “any person aggrieved” by discrimination in violation thereof. 42 U.S.C. § 18116(a).

62. Defendants have failed to implement policies, procedures, and training of staff necessary to ensure compliance with the Patient Protection and Affordable Care Act.

63. Plaintiff is therefore entitled to injunctive relief; attorneys’ fees, costs, and disbursements; and compensatory damages for the injuries and loss they sustained as a result of Defendants’ discriminatory conduct and deliberate indifference as hereinbefore alleged, pursuant to 42 U.S.C. § 18116(a).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff respectfully prays that this Court grant the following relief:

a. Enter a declaratory judgment, pursuant to Rule 57 of the Federal Rules of Civil Procedure, stating that Defendants’ policies, procedures, and practices have subjected Plaintiff to unlawful discrimination in violation Section 1557 of the Patient Protection and Affordable Care Act.

b. Issue an injunction forbidding Defendants from implementing or enforcing any policy, procedure, or practice that denies deaf or hard of hearing individuals, or their

1 companions, meaningful access to and full and equal enjoyment of Defendants' facilities,  
2 services, or programs;

3  
4 c. Issue an injunction ordering Defendants:

5 i. to develop, implement, promulgate, and comply with a policy requiring  
6 that when a deaf or hard of hearing individual requests an in-person  
7 interpreter for effective communication, one will be provided as soon as  
8 practicable in all services offered by Defendants;

9  
10 ii. to develop, implement, promulgate, and comply with a policy to ensure  
11 that Defendants will notify individuals who are deaf or hard of hearing of  
12 their right to effective communication. This notification will include posting  
13 explicit and clearly marked and worded notices that Defendants will provide  
14 sign language interpreters, videophones, and other communication services to  
15 ensure effective communication with deaf or hard of hearing persons;

16  
17 iii. to develop, implement, promulgate, and comply with a policy to ensure  
18 that deaf or hard of hearing individuals are able to communicate through the  
19 most appropriate method under the circumstances.

20  
21 iv. to create and maintain a list of sign language interpreters and ensure  
22 availability of such interpreters at any time of day or night;

23  
24 v. to train all employees, staff, and other agents on a regular basis about the  
25 rights of individuals who are deaf or hard of hearing under the ACA.

26  
27 d. Award to Plaintiff:

28 i. Compensatory damages pursuant to the ACA;

- 1           ii.       Reasonable costs and attorneys' fees pursuant to the ACA;
- 2           iii.       Interest on all amounts at the highest rates and from the earliest dates
- 3                   allowed by law;
- 4           iv.       Any and all other relief that this Court finds necessary and appropriate.
- 5

6                   **DEMAND FOR JURY TRIAL**

7           Plaintiff demands a trial by jury for all of the issues a jury properly may decide, and for

8 all of the requested relief that a jury may award.

9       Dated: October 5, 2018

10                               Respectfully submitted,

11                               By:

12                               

13                               Andrew Rozynski, Esq.  
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